

## NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**JULIUS JOHNSON,**

**Defendant and Appellant.**

**A124767**

**(Contra Costa County  
Super. Ct. No. 05-081019-2)**

Defendant Julius Johnson appeals a judgment by jury trial following his conviction of grand theft of the person. (Pen. Code, § 487, subd. (c).)<sup>1</sup> His counsel has advised that examination of the record reveals no arguable issues. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Counsel informed defendant in person that a *Wende* brief was being filed and that defendant had the right to personally file a supplemental brief in this case within 30 days. No supplemental brief has been filed. We find no arguable issues and affirm.

### BACKGROUND

A November 2008 first amended information charged defendant with grand theft of the person pursuant to Penal Code section 487, subdivision (c),<sup>2</sup> and alleged a prior

---

<sup>1</sup> Grand theft of the person is committed “[w]hen the property is taken from the person of another.” (Pen. Code, § 487, subd. (c).)

<sup>2</sup> All undesignated section references are to the Penal Code.

robbery conviction as a strike under the “three strikes” law. (§§ 1170.12, 667, subds. (b)-(i).) Prior to trial, three other priors were dismissed.

At 11:00 a.m. on April 13, 2008, Vijay Behl was working at Sam’s Jewelers (Sam’s), located in an Antioch shopping mall. At about that time, while Behl was helping another customer, defendant entered Sam’s, walked around and then left. About 20 or 25 minutes later, defendant returned to Sam’s, pointed to two diamond bracelets worth approximately \$20,000, and asked to see them. Behl put one of the bracelets on the counter and held the other one. Defendant said he wanted to talk to his girlfriend and held his cell phone. As defendant and Behl were negotiating the price, defendant suddenly grabbed the bracelet that was on the counter and the bracelet Behl was holding and ran out of Sam’s and toward Mervyn’s. Behl identified defendant at trial as the person who took the bracelets. Behl said he was “certain” of his identification of defendant.

On the day of the incident, Naresh Saini was working in the Antioch mall at the Treasure Island Jewelry Store kiosk. In the morning, defendant approached the kiosk and asked Saini to show him an “expensive chain.” Saini, who was with another customer, told defendant he needed to fill out a credit application and produce identification. Defendant said he did not have identification with him and left.

Defendant’s mother, Bridgett Talley, testified that on the day of the incident, defendant was at her home when she woke up at 6:30 a.m., and remained there until his girlfriend picked him up that evening. The sole thrust of the defense was mistaken identity.

The discussion between counsel and the court regarding jury instructions was not recorded and the appellate record does not indicate the instructions requested by counsel.

Although defendant was charged with grand theft of the person (§ 487, subd. (c)), the jury was instead instructed regarding grand theft of property exceeding \$400 in value (§ 487, subd. (a).) The court’s oral and written instructions given stated: “The defendant is charged with grand theft. [¶] To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant took possession of property owned by

someone else; [¶] 2. The defendant took the property without the owner's consent; [¶] 3. When the defendant took the property, he intended to deprive the owner of it permanently; [¶] 4. The defendant moved the property even a small distance and kept it for any period of time, however brief; [¶] AND [¶] 5. The property taken was worth more than \$400.” The jury was not instructed as to subdivision (c) of section 487.

The jury's verdict stated that defendant was guilty of grand theft in violation of section 487, subdivision (c), as charged in the information.

The court's failure to instruct the jury as to subdivision (c) of section 487 was harmless error. (*People v. Flood* (1998) 18 Cal.4th 470, 504-507.) Grand theft may be committed under either subdivision (a) or (c) of section 487. The essence of “grand theft” is the “felonious stealing, taking or driving away the personal property of another.” (*People v. Flores* (1943) 58 Cal.App.2d 764, 768.) To constitute a taking from the person pursuant to section 487, subdivision (c), the property must, in some way, be physically attached to the person. (*People v. Williams* (1992) 9 Cal.App.4th 1465, 1472.) Moreover, it is the felonious taking of property from another's person that constitutes “grand theft,” not the taking of any specified amount from the person or taking of property from any specified place on the person. (*People v. Crenshaw* (1944) 63 Cal.App.2d 395; *People v. Fiegelman* (1939) 33 Cal.App.2d 100, 104.)

Here, substantial evidence was presented that defendant took one of the bracelets from Behl's person, satisfying the elements of subdivision (c) of section 487. In any case, defendant's theft of the bracelets from Sam's, valued at \$20,000, establishes the elements of grand theft under subdivision (a) of section 487. Thus, the instructional error is harmless.

At a bifurcated court trial, the court found the prior strike allegation true. At sentencing the court struck the prior strike allegation. It properly sentenced defendant to the mitigated 16-month term and denied probation. The court imposed a \$200 restitution fine (§ 1202.4) , a \$20 court security fine, a \$200 parole revocation fine, suspended unless parole is revoked (§ 1202.45), and a \$340 Division of Juvenile Facilities booking fee. He was properly awarded 26 days of actual credit and 12 days of conduct credit.

Defendant was adequately represented at all stages of the proceedings. No arguable issue is shown.

DISPOSITION

The judgment is affirmed.

---

SIMONS, Acting P.J.

We concur.

---

NEEDHAM, J.

---

BRUINIERS, J.